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10/724,453

11/28/2003

James C. Peacock III

53233-00007

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7590

02/26/2008

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

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SUITE 600

IRVINE, CA 92614-7319

EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/11/2008 have been fully considered but they are not persuasive. Applicant argues the Amendment filed 11/19/2007 did not contain any amendments and the new Final Rejection mailed 12/10/2007 was required because of the improper 35 USC 102(e) reference (Nakayama, US 2006/0036311) used to reject the pending claims in the 9/18/2007 Final Rejection. Thus, Applicant contends the Amendment filed 11/19/2007 does not necessitate a new grounds of rejection and accordingly the rejection mailed 12/10/2007 should not have been made final.

The Examiner respectfully traverses the Applicant's remarks. The Examiner agrees the Amendment filed 11/19/2007 did not necessitate a new ground of rejection. However, the Amendment filed 7/2/2007 in response to the Non-final Rejection mailed 4/3/2007 does contain amendments necessitating new grounds of rejection. Thus, the Final Rejection mailed 12/10/2007 is proper.

2. Applicant's arguments filed 2/11/2008 regarding the rejection of the claims under 35 USC 102(e) as being anticipated by O'Brien (US 2005/0060021) have been fully considered but they are not persuasive. Applicant argues O'Brien does not teach the second composite material comprises a plurality of particles. The Examiner respectfully traverses the Applicant's remarks. A particle is defined as a minute quantity or fragment; a relatively small portion or amount of something (Merriam-Webster dictionary). It is inherent that the second composite material is made up of particles, or

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smaller divisions of the entire material, and the size of the particles may be defined as the inner diameter of the pores.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe  
February 19, 2008

/K. M. D./  
Examiner, Art Unit 3734

/ (Jackie) Tan-Uyen T. Ho/

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